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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C 20554

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In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128

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REPLY COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully submits the following reply comments on the Commission's *Notice of Proposed Rulemaking* in the above-captioned docket.[1]

INTRODUCTION

In its initial comments filed herein, CompTel offered its views on the broad range of issues raised by the Commission's *Notice*. Nothing included in the initial comments filed by other parties has shaken its conviction on these points, and CompTel commends the Commission's careful attention to its initial submission. CompTel's reply comments are limited to its criticism of a particularly outlandish proposal made by the American Public Communications Council ("APCC");[2] namely, that payphone service providers ("PSPs") should be empowered to extract "compensation" in the amount of 40 cents per call from presubscribed operator service providers ("OSPs") for the delivery of calls dialed on a 0+

[1] FCC 96-254 (rel. June 6, 1996) (hereinafter "*Notice*"). CompTel filed initial Comments in this docket on July 1, 1996.

[2] *See* APCC Comments (July 1, 1996), pp. 19-21

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basis. This proposal displays a remarkable hubris and must be rejected outright. In an era when both the Commission and OSPs are struggling to exert reasonable control over the rates charged for 0+ calls from aggregator locations, APCC seeks to impose unprecedented new costs on the industry which could only lead to a new round of 0+ rate inflation. Worse yet, there can be no justification for such a charge, since PSPs already are amply compensated for the delivery of 0+ traffic in the form of commission payments made to them by OSPs. This docket should address the understandable claim of PSPs for reasonable compensation for delivery of non-commissionable traffic (i.e., "dial-around" calls), but should eschew APCC's attempt to obtain an undeserved double-recovery of compensation for traffic routed to the presubscribed OSP.

I. MARKET FORCES ENSURE THAT PRESUBSCRIBED OSPs PROVIDE FAIR COMPENSATION TO PSPs FOR DELIVERY OF 0+ CALLS

Virtually all 0+ dialed interLATA calls placed from payphones today are routed to OSPs which are affirmatively chosen by premise owners and PSPs.[3] As the Commission recently recognized, "OSPs generally compete with each other. . .to receive such traffic by offering commissions to payphone. . .owners on all 0+ calls from a public phone in exchange for being chosen by the premises owners as the 'presubscribed' carrier serving their phones."[4] Thus, OSPs negotiate with PSPs to established a mutually agreeable level of

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[3] *See Second Further Notice of Proposed Rulemaking*, In the Matter of Billed Party Preference for InterLATA 0+ Calls, CC Docket No 92-777, rel. June 6, 1996 (hereafter *OSP FNRPM*), ¶ 5. *See also Notice* ¶ 16.

[4] *OSP FNPRM* ¶ 5.

compensation, and competition between OSPs establishes a market value for the service provided by PSPs in originating 0+ calls. In this way, PSPs already are fully and adequately compensated for the delivery of 0+ calls to their chosen, presubscribed OSPs in a manner which complements the 1996 Act's[5] overarching goal of a "pro-competitive, deregulatory national policy framework" for telecommunications,[6] and its reliance on private negotiations wherever feasible.[7]

Importantly, this system of private negotiations has worked to ensure that PSPs receive compensation in an amount which is (at least) "fair." Without indicating its agreement, CompTel notes that APCC itself acknowledges that "fair" compensation to PSPs for the delivery of 0+ calls ranges between 40 cents and 80 cents per call, depending upon whether local coin calls are included in the system.[8] At the same time, APCC acknowledges that AT&T <u>currently</u> pays PSPs from 45-80 cents per call where it is the presubscribed OSP.[9] CompTel members report that they normally must outbid the AT&T per call

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[5] "1996 Act" refers to the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[6] S. Conf. Rep. No. 104-230, 104th Cong., 2d. Sess. 1 (1996) ("Joint Explanatory Statement").

[7] *See* 1996 Act, §§ 252-253. By the same token, any suggestion that 1+ dialed (coin sent-paid) calls from pay telephones should require payment of additional compensation should be rejected. Whenever an IXC provides such services it already pays a hefty coin collection fee to the PSP pursuant to privately negotiated agreements.

[8] APCC Comments, pp. 31-34.

[9] *Id.* p. 32.

commission rate two or three times over to obtain the same privilege,[10] and that their average commission rates to PSPs exceed $1.50 per call.[11] Thus, by APCC's own reckoning, PSPs already are being amply compensated by their presubscribed OSPs. Thus, the additional "compensation" charge sought by APCC for 0+ calls amounts to a double-recovery plain and simple.

Worse yet, assessment of such a charge will greatly exacerbate an existing 0+ call rate problem which both the Commission and OSPs are struggling to address. Without belaboring the matter, the Commission has concluded that some OSPs charge "very high rates" to complete 0+ calls from payphones because they are "paying very high commissions to both premises owners and sales agents who sign up those premises owners."[12] In its Docket No. 92-77, the Commission is attempting to formulate rules which will help constrain 0+ traffic rate levels. APCC's proposal would emasculate this effort. As the Commission has recognized, higher commission rates translate directly into higher rates for consumers. Thus, APCC's 40-80 cent charge ultimately would unfairly enrich PSPs at the expense of consumers. Indeed, APCC's proposal is particularly objectionable because it creates a new hidden charge which 0+ consumers would not be able to either see or avoid -- an outcome which is antithetical to the proposals made by the Commission in its *FNPRM* in Docket No. 92-77.

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[10] In addition to its name recognition, AT&T benefits from the fact that only it can accept proprietary AT&T calling cards. Since a higher "dial around" rate is experienced by non-AT&T OSPs, PSPs demand a higher per call commission rate from them.

[11] In addition, most APCC members require that the OSP collect a substantial "Premise Imposed Fee" on their behalf.

[12] *OSP FNPRM* § 5.

II. APCC's JUSTIFICATION FOR ADDITIONAL 0+ CALL COMPENSATION IS UNFOUNDED

APCC provides two reasons why it believes that PSPs are deserving of additional, presubscribed compensation for delivery of 0+ calls to presubscribed OSPs. Neither are convincing in the least. First, APCC complains that "rate ceilings in many states prevent the marketplace from ensuring that payphone service providers are fairly compensated for intrastate 0+ calls."[13] Of course, the FCC simply lacks jurisdiction to address rates for such intrastate 0+ calling, and, thus, APCC's argument is not cognizable. In addition, APCC fails to point out that the rate ceilings about which its complains apply to OSP rates, and the new costs which it seeks to impose would therefore not be recoverable by OSPs. It is disturbing that, while APCC is anxious to receive a double-recovery of its costs, it seems not the least concerned about imposing non-recoverable costs upon the OSPs with which they contract.

Second, APCC argues that the extraordinary commission payments which they already demand (and receive) from presubscribed OSPs are "for the value to the IXC of receiving presubscribed traffic from the location" and "cannot be viewed as providing fair compensation to payphone service providers' cost."[14] It is hard to see the difference. In CompTel's view, in return for the perceived "value" of serving presubscribed locations, OSPs agree to pay commissions which "compensate" PSPs for the reasonable cost of delivering the traffic <u>and</u> provide a reasonable profit to PSPs for providing the service. APCC's argument could only withstand scrutiny if OSP commission payments normally were

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[13] APCC Comments, p. 19.

[14] <u>Id</u>. at p. 20.

less than the amount required to compensate the reasonable costs incurred by PSPs. However, as the discussion in the preceding section makes evident, OSP commission payments routinely exceed the amount which APCC itself has pegged as a fair compensation level. Therefore, there is no need to replace or supplement such commission streams.

CONCLUSION

In what started as a commendable effort to ensure that PSPs are "fairly compensated"[15] for use of their payphones, APCC has argued for an unjustifiable windfall for PSPs at the expense of presubscribed OSPs and consumers. Adoption of APCC's proposal to prescribe new compensation payments from presubscribed OSPs would enable PSPs to achieve a double-recovery of costs and spark a new round of sharp rate increases applicable to 0+ calling. This is inimical to the purposes of the 1996 Act, the Commission's efforts in Docket No 92-77 and the public interest. Accordingly, CompTel respectfully urges that APCC's plea be rejected outright.

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[15] *See* 47 U.S.C. § 276(b)(1)(A).

Respectfully submitted,

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